

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

ANTHONY MATOS,)
Petitioner)
)
v.) 07-cv-30239-MAP
) 04-cr-30046-MAP
UNITED STATES OF AMERICA,)
Respondent)

MEMORANDUM AND ORDER REGARDING
PETITIONER'S MOTION TO VACATE, SET ASIDE OR CORRECT
SENTENCE PURSUANT TO 28 U.S.C. § 2255
(Docket No. 1)

February 2, 2009

PONSOR, D.J.

On October 16, 2006, the court sentenced Petitioner to custody of the Bureau of Prisons for 84 months following his pleas to various counts of an indictment charging him with participation in a land flipping scheme. On December 12, 2007, Petitioner filed this motion pursuant to 28 U.S.C. § 2255. The sole issue raised by him is whether his attorney failed to file a notice of appeal after Petitioner requested that he do so. The Petition was supported by an affidavit in which Petitioner averred that he did, in fact, instruct his attorney to file an appeal.

Pursuant to the court's request, Petitioner's trial attorney submitted an affidavit of his own. A fair construction of this submission, in light of Petitioner's affidavit, is that a request for an appeal was made in a

timely fashion.

The government concedes that an attorney's failure to file an appeal when instructed does constitute ineffective assistance of counsel for purposes of § 2255, and that a showing of actual prejudice is not necessary.

For the foregoing reasons, the petitioner's motion pursuant to 28 U.S.C. § 2255 (Dkt. No. 1) is hereby ALLOWED, and Petitioner may proceed with his appeal. In order to insure that Petitioner's rights are protected, the court hereby instructs the clerk to file a notice of appeal on Petitioner's behalf within ten (10) days of the issuance of this memorandum. This case may now be closed.

It is So Ordered.

/s/ Michael A. Ponsor

MICHAEL A. PONSOR

U. S. District Judge